IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 7330 of 2007(V)

PETITIONER:

C.K.MOHAMMED SHERIF,
PROPRIETOR, CEEKAYS TIMBERS, VANIYAMBALAM,
MALAPPURAM DISTRICT.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENTS:

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1. INTELLIGENCE OFFICER,
SQUAD NO.I, COMMERCIAL TAXES, TRICHUR.

2. COMMERCIAL TAX OFFICER,
NILAMBOOR.

3. STATE OF KERALA, REPRESENTED BY
SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 7330/2007 V

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE NOTICE DT. 2/3/2007 BY R1.

EXT.P2. COPY OF THE BILL NO. 315 DT. 1/3/2007.

True copy

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K.BALAKRISHNAN NAIR, J.

W.P.(C).No.7330 of 2007-V

Dated this the 6th day of March, 2007

JUDGMENT

The petitioner was transporting a consignment of timber logs to a registered dealer, under valid sale bills. While so, the consignment was detained by the first respondent at Thrissur and Ext.P1 notice under Section 47(2) of the Kerala Value Added Tax Act, 2003 was issued alleging that the goods are not accompanied by delivery notes under Form 15. The petitioner challenges Ext.P1 on the ground that there is no allegation of attempt to evade tax. Therefore, the notice is issued without jurisdiction. It is also submitted that sufficient number of delivery notes are not made available and therefore his business is crippled and therefore the provision (Section 46 (3) (b) of the Act) which makes delivery notes mandatory for intra state transport is challenged in this writ petition.

2. I heard the learned Government Pleader for the respondents. The learned Government Pleader submitted that, now, it is a statutory requirement that the consignment should have been accompanied by a valid delivery note, in Form 15. It is also pointed out that the first respondent is willing to furnish sufficient number of authenticated delivery notes to the petitioner for his business.

3. The first respondent is directed to consider the release of the goods under the proviso to Section 47 (2) of the Kerala Value Added Tax Act. If the same cannot be released under that proviso, the first respondent shall release them on furnishing security as provided under Rule 67 read with Rule 19 (2) of the Kerala Value Added Tax Rules immediately on production of a copy of this judgment and furnishing security as demanded. The Commercial Taxes Officer (Enquiry) having jurisdiction over the matter shall pass final orders on the proceedings initiated by issuing Ext.P1, in accordance with law within one month from today. The first respondent shall issue sufficient number of authenticated delivery notes to the petitioner, so that he can carry on his business smoothly. In view of the reliefs granted, the challenge of the petitioner against Section 46 (3) (b) is kept open. He will be free to raise it in appropriate cases, in future.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS